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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 Estate of Thomas Kail, by and through Sonia
Kail as Special Administrator;

Case No. 2:20-cv-01262-APG-BNW

10 Plaintiff,
11 v.
12 United States of America,
13 Defendant.

**Stipulation for Exception to Settlement
Conference Attendance Requirements
for the United States**

15 Plaintiff, Estate of Thomas Kail, by and through Sonia Kail as Special
16 Administrator, and Defendant, United States of America, through counsel, stipulate and
17 request that the Court allow Assistant United States Attorney (“AUSA”) Skyler Pearson to
18 participate in the upcoming settlement conference for this case as the sole representative for
19 the United States.

20 This is a personal injury case arising out of an automobile accident. The Court has
21 set this case for a settlement conference to be held on September 14, 2023, at 10:00 a.m.
22 (ECF No. 50). The order scheduling the settlement conference mandates that

23 The remote participation of each of the following individuals is required
24 for the entire duration of the Settlement Conference: an attorney of record who
will be participating in the trial of this case; all parties appearing *pro se*, if any;
25 all individual parties; for non-individual parties, a representative with
settlement authority up to the full amount of the claim. If any party is subject
26 to coverage by an insurance carrier, then a representative of the insurance
carrier with settlement authority up to the full amount of the claim must also
27 participate for the entire duration of the Settlement Conference.

1 The Court **may impose sanctions** if any of the above individuals fail to
 2 participate in the Settlement Conference.

2 (ECF No. 50 at 2).

3 The United States is unlike any other party because it is “the most frequent litigant
 4 in federal court.” *United States v. U.S. Dist. Court for N. Mariana Islands*, 694 F.3d 1051,
 5 1058–59 (9th Cir. 2012), *as amended* (Oct. 16, 2012). Because the government handles a
 6 very large number of cases, it would be impractical, if not physically impossible, for those
 7 with settlement authority to prepare for—and appear at—all settlement conferences. *Id.* at
 8 1059. The Advisory Committee notes to the 1993 amendments to Federal Rule of Civil
 9 Procedure 16 acknowledge the unique position that the federal government occupies as a
 10 litigant:

11 Particularly in litigation in which governmental agencies or large amounts of
 12 money are involved, there may be no one with on-the-spot settlement authority,
 13 and the most that should be expected is access to a person who would have a
 major role in submitting a recommendation to the body or board with ultimate
 decision-making responsibility.

14 Fed. R. Civ. P. 16 advisory committee’s note.

15 The government delegates settlement authority to select individuals to promote
 16 centralized decision-making. *U.S. Dist. Court for N. Mariana Islands*, 694 F.3d at 1059–60.
 17 Centralized decision-making promotes three important government objectives. *Id.* First, it
 18 allows the government to act consistently in important cases. *Id.* Second, centralized
 19 decision-making allows the executive branch to pursue policy goals more effectively by
 20 placing ultimate authority in the hands of a few officials. *Id.* Third, by giving authority to
 21 high-ranking officials, centralized decision-making better promotes political accountability.
 22 *Id.* In light of these principles, the Ninth Circuit has determined that district courts should
 23 adopt a “practical approach” in deciding whether to require a government representative
 24 with full settlement authority to attend a pre-trial conference. *Id.* at 1061 (quotation
 25 omitted). Only as a “last resort” should the district court require an official with full
 26 settlement authority to participate in a pre-trial conference in person. *Id.* (quotation
 27 omitted).

1 The ultimate authority to settle this case rests with officials at the United States
2 Postal Service, the United States Attorney's Office for the District of Nevada, and officials
3 within the Department of Justice, depending on the amount involved, and whether the
4 client agency and Department of Justice officials agree with the proposed resolution. 28
5 C.F.R. § 0.168(a). It is not feasible, however, for these officials to attend all settlement
6 conferences. Moreover, AUSAs routinely participate in settlement conferences in this
7 district as the United States' sole settlement representatives. Before the settlement
8 conference, the AUSA discusses the case with the officials who have settlement authority
9 to determine the range of settlement offers the United States would accept. This approach
10 has not hampered settlement discussions or impeded settlement in the hundreds of
11 settlement conferences in which the United States has participated over the years. In fact,
12 hundreds of cases involving the United States have settled over the years using this
13 approach.

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1 Accordingly, the parties stipulate and request that the Court allow AUSA Skyler
2 Pearson to participate in the settlement conference as the sole representative for the United
3 States. AUSA Pearson will brief the appropriate government officials on the case before the
4 settlement conference to ensure the United States' meaningful participation. Should it be
5 necessary, AUSA Pearson will provide further recommendations to appropriate
6 government officials via telephone during the settlement conference.

7 Respectfully submitted this 4th day of September 2023.

8 PAUL PADDA LAW

JASON M. FRIERSON

United States Attorney

9 /s/ Paul S. Padda

10 PAUL S. PADDA, ESQ.

/s/ Skyler Pearson

Nevada Bar No. 10417

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12 *Attorney for Plaintiff*

13

14 **IT IS SO ORDERED**

15 

16 **UNITED STATES MAGISTRATE JUDGE**

17 **DATED:** _____ September 5, 2023